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SANGAMON CTY - PIERCE WASTE
OIL SERVICE, INC.
LPC#16712015

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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY,

Complainant,

-vs-

PIERCE WASTE OIL SERVICE, INC.,
a Delaware corporation, and
CENTRAL REFINING COMPANY, a
a Delaware corporation,

Respondents.

PCB 83-60

STIPULATION AND PROPOSAL FOR SETTLEMENT

Pursuant to section 103.180 of the Board's procedural rules (35 Ill. Adm. Code 103.180), Complainant ILLINOIS ENVIRONMENTAL PROTECTION AGENCY ("Agency") by its attorney, Neil F. Hartigan, Attorney General of the State of Illinois, and Respondents PIERCE WASTE OIL SERVICE, INC. ("Pierce Waste Oil") and CENTRAL REFINING COMPANY ("Central Refining"), by their attorneys, Wolfson & Papushkewych, jointly submit the following Stipulation and Proposal for Settlement.

This Stipulation and Proposal for Settlement has been achieved after extensive pre-trial litigation by the parties and is submitted in order to avoid any further burdens and expenses of litigation and to achieve termination of this action on just and equitable terms, taking into consideration the provisions of the Environmental Protection Act, the Board regulations promulgated thereunder, the facts described herein, the circumstances of the parties and the interests of the public. The parties believe their interests, as well as the public

interest, will be served best by resolution of this action on the terms and conditions provided herein.

This Stipulation and Proposal for Settlement is made, agreed and submitted upon the condition that the Illinois Pollution Control Board ("Board") approve it. In the event the Board fails to approve this Stipulation and Proposal for Settlement, everything contained herein shall be null and void and of no effect in this or any other proceeding. In any event, any and all stipulations of fact and admissions contained herein are submitted only for the purposes of this settlement and shall not be used in any subsequent proceeding; provided that, once it is approved by the Board, the Complainant and Respondents shall not be prohibited from using this Stipulation and Proposal for Settlement as evidence to establish its existence or its terms in any action by the State to enforce the provisions of this Stipulation.

I. STIPULATION OF FACTS

The parties hereto agree and stipulate that the following Stipulation of Facts represents a fair summary of the evidence and testimony that would be presented at a hearing on the merits of this cause, if one were held.

* * *

A. Identification and Description of the Parties

1. On or about April 22, 1983, the Agency filed its complaint alleging violations of sections 9, 12 and 21 of the Environmental Protection Act (Ill. Rev. Stat. 1983, ch. 111 1/2, pars. 1009, 1012 and 1021) and various Board regulations promulgated thereunder by Respondents Pierce Waste Oil and

Central Refining during the approximate time period April 1980 until April 1983. On December 12, 1985, the Agency filed its Second Amended Complaint.

2. At all times pertinent to the Agency's Second Amended Complaint, Pierce Waste Oil was a Delaware corporation duly licensed to do business in Illinois.

3. At all times pertinent to the Agency's Second Amended Complaint, Pierce Waste Oil owned and operated a used oil collection and storage facility ("Pierce Waste Oil facility") located at 1925 East Madison Street in Springfield, Sangamon County, Illinois.

4. At all times pertinent to the Agency's Second Amended Complaint, Central Refining was a Delaware corporation duly licensed to do business in Illinois.

5. At all times pertinent to the Agency's Second Amended Complaint, Central Refining owned and operated a used oil re-refining and reclamation facility ("Central Refining facility") located at 2000 East Madison Street in Springfield, Sangamon County, Illinois.

6. The businesses conducted by Respondents at the Pierce Waste Oil facility and Central Refining facility consisted of the recycling and reuse of waste materials, i.e., waste oil, an activity that is specifically encouraged in subsection 20(b) of the Environmental Protection Act ("Act") (Ill. Rev. Stat. 1983, ch. 111 1/2, par. 1020(b)).

7. Respondent Pierce Waste Oil ceased operating the Pierce Waste Oil facility on or about February 1983 and has not operated the Pierce Waste Oil facility since that date.

8. Respondent Central Refining ceased operating the Central Refining facility on or about February 1983 and has not operated the Central Refining facility since that date.

9. On or about June 15, 1983, Pierce Waste Oil and Central Refining consummated the transfer and sale of all the realty, structures and equipment comprising the Pierce Waste Oil and Central Refining facilities, to Moreco Energy, Inc., an Illinois corporation doing business in Illinois.

B. Air Pollution Violations

10. Subsection 9(b) of the Act (Ill. Rev. Stat. 1983, ch. 111 1/2, par. 1009) provides:

"No person shall:

- (b) Construct, install, or operate any equipment, facility, vehicle, vessel, or aircraft capable of causing or contributing to air pollution or designed to prevent air pollution, of any type designated by Board regulations, without a permit granted by the Agency, or in violation of any conditions imposed by such permit;".

11. Former Air Pollution Rule 103(b)(1) provides, in pertinent part:

"No person shall:

Cause or allow the operation of any new emission source or new air pollution control equipment of a type for which a Construction Permit is required by Paragraph (a) of this Rule 103 without first obtaining an Operating Permit from the Agency ***".

12. Intermittently since approximately January 1981 and continuing at least through 1982, Respondent Central Refining operated Reactor #2, Condensor Systems A and B, the Contactor and API Separator at the Central Refining facility without first obtaining an Operating Permit from the Agency.

13. On June 8, 1981, September 30, 1981, January 11, 1982, and May 19, 1982, Pierce Waste Oil and Central Refining submitted applications for a permit to operate certain equipment at the Central Refining facility, including Reactor #2, Condensor Systems A and B, the Contactor and the API Separator. Each of these applications were denied by the Agency and no appeal from the denials were taken.

14. Reactor #2, Condensor Systems A and B, the Contactor and API Separator constitute new emission sources for which an operating permit is required by former Air Pollution Rule 103(b)(1).

15. Central Refining has not operated Reactor #2, Condensor Systems A and B, the Contactor and the API Separator since approximately February 1983. On December 7, 1984, the Agency issued a permit to Moreco Energy, Inc. for operation of former Condensor System B.

16. Former Air Pollution Rule 103(b)(2) provides, in pertinent part:

"No person shall cause or allow the operation of any existing emission source or any existing air pollution control equipment without first obtaining an Operating Permit from the Agency no later than the dates shown in the following schedule:

SOURCE CLASSIFICATION

DATE OPERATING
PERMIT REQUIRED

Gas and oil fired boilers and all other emission sources or air pollution control equipment not listed previously in this paragraph except equipment excluded under paragraph (i) of this Rule By June 1, 1973

."

17. Intermittently since approximately January 1981 and continuing until approximately February 1983, Respondent Central Refining operated Reactor 1, Boiler B1, and Pipe Stills nos. 1-3 at the Central Refining facility without first obtaining an operating permit from the Agency.

18. On June 8, 1981, September 30, 1981, January 11, 1982, and May 19, 1982, Pierce Waste Oil and Central Refining submitted applications to the Agency for a permit to operate certain equipment at the Central Refining facility, including Reactor 1, Boiler B1, and Pipe Stills nos. 1-3. These applications were denied by the Agency and no appeal from this denial was taken.

19. Reactor 1, Boiler B1 and Pipe Stills nos. 1-3 are existing emission sources, as defined by Board regulations.

20. Central Refining has not operated Reactor 1, Boiler B1 and Pipe Stills nos. 1-3 since approximately February 1983. On December 7, 1984, the Agency issued a permit to Moreco Energy, Inc. for operation of former Pipe Stills nos. 1-3.

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C. Water Pollution Violations

21. Subsection 12(b) of the Act (Ill. Rev. Stat. 1983, ch. 111 1/2, par. 1012(b)), provides:

"No person shall:

Construct, install or operate any equipment, facility, vessel, or aircraft capable of causing or contributing to water pollution, or designed to prevent water pollution, of any type designated by Board regulations, without a permit granted by the Agency, or in violation of any conditions imposed by such permit."

22. Former Rule 953(a) of the Board's Rules and Regulations, Chapter 3: Water Pollution (hereinafter "Water Pollution Rules"), provides:

"No person shall cause or allow the use or operation of any treatment works, pre-treatment works, or wastewater source after December 31, 1972 without an Operating Permit issued by the Agency, except as provided in Paragraph (b), (c) and (d)."

23. The exceptions listed in Water Pollution Rule 953(b), (c) and (d) do not apply to Respondents' facilities.

24. On various dates from approximately June 1981 until July 1982, including January 28, 1982 and April 12, 1982, Respondents Pierce Waste Oil and Central Refining caused or allowed facilities constituting treatment works to be used at Respondents' facilities. Specifically, Respondents allowed the collection of waste water and runoff in a lagoon located in the northeast area of the Central Refining facility and a cooling pond located in the southern area of the Central Refining facility, from which Respondents would recover oil for processing at the Central Refining facility.

25. At no time did Respondents apply for or possess an operating permit for the use of the southern area cooling pond or the northeast area lagoon as treatment works.

26. The southern area cooling pond and the northeast area lagoon were facilities capable of causing or contributing to water pollution in the vicinity of the Pierce Waste Oil/Central Refining facilities, from approximately June 1981 until July 1982.

27. Respondents eliminated the southern area cooling pond and the northeast area lagoon in approximately September 1981 and July 1982, respectively.

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D. Land Pollution Violations

28. Subsection 21(d) of the Act (Ill. Rev. Stat. 1983, ch. 111 1/2, par. 1021(d)), provides:

"No person shall:

Conduct any waste-storage, waste-treatment, or waste-disposal operation:

1. Without a permit granted by the Agency or in violation of any conditions proposed by such permit, including periodic reports and full access to adequate records and the inspection of facilities, as may be necessary to assure compliance with this Act and with regulations and standards adopted thereunder; *** or,
2. In violation of any regulations or standards adopted by the Board under this Act.

This subsection (d) shall not apply to hazardous wastes."

29. Rule 201 of the Board's Rules and Regulations, Chapter 7: Solid Waste (hereinafter "Solid Waste Rules"), provides:

"Development Permits:

Subject to such exemption as expressly provided in Section 21(d) of the Environmental Protection Act as to the requirement of obtaining a permit, no person shall cause or allow the development of any new solid waste management site or cause or allow the modification of any existing solid waste management site without a Development Permit issued by the Agency."

30. The exemption provided in Section 21(d) of the Act does not apply to Respondents' facilities.

31. Solid Waste Rule 210 provides:

"Supplemental Permits.

No person shall cause or allow modification of any solid waste management site, or accept any type of waste except under conditions specified in a permit issued by the Agency. Development, operating and experimental permits may be modified by supplemental permit issued by the Agency to allow such modifications."

32. The facilities and equipment utilized by Pierce Waste Oil and Central Refining constituted an existing solid waste management site within the meaning of Solid Waste Rule 201 in that Respondents stored and processed waste oils at the Pierce Waste Oil and Central Refining facilities.

33. On May 5, 1981, Pierce Waste Oil was granted a permit (IEPA permit 1980-17-OP) to operate its solid waste management site. Special conditions one and five of the permit provide:

"1. This facility shall be developed in accordance with Chapters 2, 7 and 9 of the Illinois Pollution Control Board Rules and Regulations;

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5. Special wastes received at the site for recovery shall be transported to the facility utilizing the Agency's supplemental permit system and manifest system."

34. Between January 8, 1981 and June 8, 1981, Pierce Waste Oil received special wastes, namely waste oils, on twenty-four separate occasions without possessing a valid supplemental permit.

35. Special condition number ten of Pierce Waste Oil's supplemental permit no. 1982-15, issued February 10, 1982, provides:

"Any modification to the facility, treatment process, types of amounts of wastes handled shall be subject to an application for supplemental permit for site modification submitted to this Agency."

36. In approximately April 1982, the Pierce Waste Oil/Central Refining facilities were modified in that a pit was constructed in order to hold a planned underground storage tank.

37. The Pierce Waste Oil/Central Refining facilities were modified in that facilities constituting treatment works were used at Respondents' facility from approximately June 1981 until approximately July 1982, as described in paragraph 24 above.

38. No application for modification of Respondents' facilities was submitted to the Agency with regard to the underground storage tank pit or the treatment works.

39. Respondents removed the treatment works and the underground storage tank pit in approximately July 1982 and August 1982, respectively.

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PROPOSAL FOR SETTLEMENT

The Proposal for Settlement outlined below is the result of extensive negotiations by the parties and is made, agreed, and conditioned upon the Board approving this Stipulation of Fact and Proposal for Settlement.

A. For the purposes of this proceeding only, Respondent Central Refining admits the violations alleged in Count III of the Agency's Second Amended Complaint in that, during the time period specified in the Stipulation of Facts, Respondent Central Refining operated Reactor #2, Condensor Systems A and B, the

Contact and the API Separator at the Central Refining facility without first obtaining operating permits. In so doing, Respondent Central Refining admits it violated former Air Pollution Rule 103(b)(1) and subsection 9(b) of the Act.

B. For the purposes of this proceeding only, Respondent Central Refining admits the violations alleged in Count IV of the Agency's Second Amended Complaint in that, during the time period specified in the Stipulation of Facts, Respondent Central Refining operated Reactor #1, Boiler B1 and Pipe Stills nos. 1-3 without first obtaining operating permits. In so doing, Respondent Central Refining admits it violated former Air Pollution Rule 103(b)(2) and subsection 9(b) of the Act.

C. For the purposes of this proceeding only, Respondents Pierce Waste Oil and Central Refining admit the violations alleged in Count VI of the Agency's Second Amended Complaint in that, for the time period specified in the Stipulation of Facts, Respondents caused or allowed facilities constituting treatment works to be used at Respondents' facility without obtaining an operating permit from the Agency. In so doing, Respondents Pierce Waste Oil and Central Refining admit they each violated former Water Pollution Rule 953(a) and subsection 12(b) of the Act.

D. For the purposes of this proceeding only, Respondents Pierce Waste Oil and Central Refining admit the violations alleged in Count VII of the Agency's Second Amended Complaint in that, during the time periods specified in the Stipulation of Facts, they received special wastes without possessing a valid supplemental permit and modified their

facility without applying for a supplemental permit. In so doing, Respondents Pierce Waste Oil and Central Refining admit they each violated Solid Waste Rules 201 and 210, and subsection 21(d) of the Act.

E. Respondents Pierce Waste Oil and Central Refining agree to pay a civil penalty in the amount of Twenty-Thousand Dollars (\$20,000) for the violations admitted in this Stipulation and Proposal for Settlement. Payment of this civil penalty shall be made by a check drawn to the Treasury of the State of Illinois and designated for deposit into the Environmental Protection Trust Fund for the purpose of environmental protection and related enforcement programs, as authorized pursuant to Ill. Rev. Stat. 1983, ch. 111 1/2, par. 1061. Such payment shall be submitted in three installments to the Environmental Control Division, Office of the Attorney General, 500 South Second Street, Springfield, Illinois, 62706, as follows: the sum of Ten Thousand Dollars (\$10,000) within thirty-five (35) days of the Board Order approving this Stipulation and Proposal for Settlement; the sum of Five Thousand Dollars (\$5,000) within ninety (90) days of said Order and the sum of Five Thousand Dollars (\$5,000) within 180 days of said Order.

F. All Counts of Complainant's Complaint, all Counts of the First Amended Complaint, and Counts I, II, V and VIII of the Second Amended Complaint shall be dismissed with prejudice. Approval of the Stipulation by the Board shall bar any further action by the State of Illinois or the Complainant on all Counts of said Complaint, First Amended Complaint and Second Amended Complaint.

G. Except as provided in paragraph (F), this Stipulation and the Board's Order adopting it shall in no way affect the liability of Pierce Waste Oil and Central Refining under any federal, state or local law, or regulation, including but not limited to the Illinois Environmental Protection Act, as such laws or regulations may apply to the former Pierce Waste Oil and Central Refining facilities.

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WHEREFORE, Complainant and Respondents jointly request that the Board accept and adopt the foregoing Stipulation and Proposal for Settlement.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY,

PIERCE WASTE OIL SERVICE, INC.
and CENTRAL REFINING COMPANY,

Complainant

Respondents

BY:

Joseph E. Doboda

BY:

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Wolfson & Papushkewych
Attorneys for Respondents

OFFICE OF THE ATTORNEY GENERAL

BY:

Neil F. Hartigan
RVS

DATE: February, 1986